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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Michael Price,  
  
Plaintiff,  
  
v.  
  
Charles L. Ryan, et al.,  
  
Defendants.

No. CV 18-02322-PHX-DGC (DMF)

**ORDER**

Plaintiff Michael Price, who currently is confined in Arizona State Prison Complex-Yuma, brought this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) Defendant Banning moves for summary judgment, and Plaintiff opposes.<sup>1</sup> (Docs. 18, 24, 25.) The Court will grant the Motion and terminate this action.

**I. Background**

In Count One of his Complaint, Plaintiff alleges that he has a pacemaker and that during a search, Arizona Department of Corrections (ADC) Correctional Officer Banning used a handheld metal detector on him. (Doc. 1 at 3.) Ever since, Plaintiff has had “extremely painful chest pains” and his pacemaker has not functioned properly. (*Id.*) Plaintiff seeks damages and replacement of his “damaged pacemaker.” (*Id.* at 6.)

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<sup>1</sup> The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en banc), regarding the requirements of a response. (Doc. 20.)

1 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated  
2 an Eighth Amendment claim against Banning and directed Banning to answer. The Court  
3 dismissed the remaining claims and Defendants. (Doc. 7.)

## 4 **II. Summary Judgment Standard**

5 A court must grant summary judgment “if the movant shows that there is no genuine  
6 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
7 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The  
8 movant bears the initial responsibility of presenting the basis for its motion and identifying  
9 those portions of the record, together with affidavits, if any, that it believes demonstrate  
10 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

11 If the movant fails to carry its initial burden of production, the nonmovant need not  
12 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,  
13 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts  
14 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in  
15 contention is material, i.e., a fact that might affect the outcome of the suit under the  
16 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable  
17 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
18 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th  
19 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its  
20 favor, *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,  
21 it must “come forward with specific facts showing that there is a genuine issue for trial.”  
22 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal  
23 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

24 At summary judgment, the judge’s function is not to weigh the evidence and  
25 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,  
26 477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw  
27 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited  
28 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

1     **III.   Facts**

2           The use of metal detectors on prisoners with pacemakers raises two concerns.  
3     (Doc. 19 (Def.'s Statement of Facts) ¶ 7.) One "is the possibility of 'false alarms' where  
4     the pacemaker sets off the metal detector," and the second is the "erroneous concern that  
5     the pacemaker will be adversely affected passing through the metal detector." (*Id.*;  
6     Doc. 19-1 at 7.) The ADC's Health Services Technical Manual (HSTM) states that "[t]here  
7     is no scientific evidence to support a claim of harmful interference between this equipment  
8     and metal detectors," but it is nonetheless "common community practice to have patients  
9     with pacemakers bypass metal detectors." (Doc. 19-1 at 7.) The HSTM further states that  
10    "Inmates who happen to pass through [a] walk-through [] metal detector do not need a  
11    medical evaluation." (*Id.*)

12           An ADC prisoner with a pacemaker is provided with a Special Needs Order (SNO)  
13    stating: "I/M has a pacemaker/ICD. Hand wandering or other alternatives to walking through  
14    a metal detector should be utilized if available." (Doc. 19 ¶ 12; Doc. 19-1 at 8.) When a  
15    prisoner claims "to have lost his/her documentation," and "an officer is in doubt, the  
16    [prisoner] may be passed through a walk-through metal detector." (*Id.* ¶ 10; Doc. 19-1 at  
17    8.)

18           Plaintiff's medical records indicate he has a pacemaker and SNO, stating:

19                   Metal detectors for security: Interactions with metal detectors  
20                   are unlikely to cause clinically significant symptoms in most  
21                   patients. However, the American Heart Association  
22                   recommends that you: Don't stay near the metal detector  
23                   longer than is necessary. Don't lean on or stand against the  
24                   system. If scanning with a hand-held metal detector is  
25                   necessary, tell the security personnel that you have a  
26                   pacemaker. Ask them not to hold the metal detector near the  
27                   device any longer than is absolutely necessary. Or ask for an  
28                   alternative form of personal search.

1 (Doc. 19 ¶ 13; Doc. 19-1 at 10.) That SNO was in effect until January 30, 2019. (Doc. 19-  
2 1 at 10.)

3 On January 23, 2018, Plaintiff informed staff that he had a pacemaker and was told  
4 to go to Defendant, who had a hand-held wand. (Doc. 24 at 7.) Plaintiff was holding the  
5 SNO when he was sent to Defendant's post for an alternative "pat search." (*Id.* at 3.)  
6 Plaintiff told Defendant that he had a pacemaker, but Defendant "kept putting that wand  
7 on my pacemaker and kept asking me what I had in me." (*Id.* at 7.) Plaintiff told Defendant  
8 again he had a pacemaker, but Defendant "kept putting the device near my pacemaker."  
9 (*Id.*) Ever since the incident, Plaintiff has experienced "weird chest pains." (*Id.*)

10 On January 24, 2018, Plaintiff submitted an HNR regarding the above incident, but  
11 there is no indication that any staff member responded. (*See id.*) Plaintiff submitted a  
12 second HNR, a copy of which he attached to his Response, but the writing and the date are  
13 too faint to be legible. (*See id.* at 8.) There is no indication that any staff member  
14 responded to this second HNR. (*See id.*)

15 Plaintiff recounted essentially the same facts in an Inmate Informal Complaint  
16 Resolution he filed on January 25, 2018. (Doc. 19-1 at 13.) Plaintiff had his "waiver" with  
17 him, but Defendant "kept putting that device over [Plaintiff's] pacemaker" and did it  
18 several times. (*Id.*) Plaintiff has "been feeling funny since [Defendant] did this," has had  
19 "weird chest pains," and his pacemaker "has not work[ed] right since [Defendant] did this."  
20 (*Id.*)

21 CO III Cuen responded to Plaintiff's Informal Complaint Resolution and stated that  
22 he spoke with Defendant, who told Cuen:

23 In regards to I/M Price, he did not reveal that information about  
24 his pacemaker until after I scanned him. I asked him why he  
25 was holding his left shoulder and he stated, "Are you trying to  
26 kill me[?]" I responded, "What do you mean," I/M Price stated  
27 "I have a pace maker man!" After he revealed that I scanned  
28 other portions of his body away from his chest. I was not  
directed nor told he had a pace maker[:] when inmates cannot  
clear the magneto polls, they get scanned with a hand held

1 wand for further inspection. I have not heard of any issues  
2 from inmates who actually walked through the magneto polls.

3 (*Id.* at 15.)

4 CO III Cuen said he considered the matter resolved and that Plaintiff may continue  
5 to the next step in the grievance process by filing an appeal. (*Id.*)

6 Plaintiff appealed Cuen's decision and received a response on March 20, 2018 from  
7 Assistant Facility Health Administrator Brin Hofer.<sup>2</sup> (Doc. 19 ¶ 16.) Hofer stated in the  
8 response that Plaintiff's "primary medical concern . . . related to a concern that your  
9 pacemaker may have been damaged in some way by being exposed to a hand held metal  
10 detector in January, 2018." (Doc. 19-1 at 17.) Hofer continued:

11 The American Heart Association states that "Interactions with  
12 metal detectors are unlikely to cause clinically significant  
13 symptoms in most patients." According to a medical review  
14 just completed, there is no evidence in your medical record that  
15 the January exposure to a hand held metal detector has  
16 compromised the effectiveness of your pacemaker. Having  
said that, a recommendation is being made to have your  
pacemaker checked by [a] Cardiologist to be certain it is  
functioning correctly.

17 (*Id.*)

18 On April 6, 2018, Plaintiff saw a cardiologist, Dr. Jonathan P. Man, and reported to  
19 Dr. Man that a guard "put[] a magnetic wand on him and that made him feel unwell." (*Id.*  
20 at 19.) Upon examining Plaintiff, Dr. Man noted that Plaintiff's cardiovascular system had  
21 "Normal rate, regular rhythm, normal heart sounds and intact distal pulses," and "Device  
22 site looks well healed, no signs of infection, erythema or hematoma." (*Id.* at 20.) Dr. Man  
23 wrote "Pacemaker functioning normally" and that he "[r]eassured [Plaintiff] that getting  
24 magnetic wand over pacemaker won't damage his heart. It will make him feel unwell due  
25 to lack of synchrony." (*Id.* at 21.) Dr. Man noted that Plaintiff was to return in about six  
26 months or if his symptoms worsened or failed to improve. (*Id.*)

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28 <sup>2</sup> Neither Defendant nor Plaintiff included a copy of Plaintiff's appeal. Defendant  
provided Hofer's response.

1 On August 5, 2019, “Plaintiff’s pacemaker was again checked by cardiology” and  
2 it was “noted to be functioning normally.” (Doc. 19 ¶ 18; Doc. 19-1 at 23.)

3 Plaintiff submits what appears to be a SNO for “Limited Duty” that was issued on  
4 May 5, 2016 and expired May 5, 2017. (Doc. 24 at 13.) The handwritten note on the  
5 document is too faint to be legible. (*See id.*) Plaintiff submits another document that also  
6 appears to be a SNO, noting that Plaintiff has “Medical ADA Restrictions/Special Needs”  
7 in the form of a “Pacemaker/Defibrillator.” (*Id.* at 14.) The SNO was active from  
8 March 11, 2019 until March 11, 2020. (*Id.*) At the bottom of the document is the same  
9 advisory contained in the other SNO, stating that “Interactions with metal detectors are  
10 unlikely to cause clinically significant symptoms in most patients,” but that the American  
11 Heart Association recommends not staying near the metal detector longer than necessary  
12 and to tell security personnel that you have a pacemaker. (*Id.*)

#### 13 **IV. Eighth Amendment Legal Standard**

14 To prevail on an Eighth Amendment medical care claim, a prisoner must show  
15 “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096  
16 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). There are two prongs  
17 to this analysis, one objective and the other subjective. First, a prisoner must show a  
18 “serious medical need.” *Jett*, 439 F.3d at 1096 (citations omitted). Examples include “[t]he  
19 existence of an injury that a reasonable doctor or patient would find important and worthy  
20 of comment or treatment; the presence of a medical condition that significantly affects an  
21 individual’s daily activities; or the existence of chronic and substantial pain.” *McGuckin*,  
22 974 F.2d at 1059-60.

23 Second, a prisoner must show that the defendant’s response to the need was  
24 deliberately indifferent. *Jett*, 439 F.3d at 1096. An official acts with deliberate indifference  
25 if he “knows of and disregards an excessive risk to inmate health or safety; the official  
26 must both be aware of facts from which the inference could be drawn that a substantial risk  
27 of serious harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S.  
28 825, 837 (1994). “Prison officials are deliberately indifferent to a prisoner’s serious

1 medical needs when they deny, delay, or intentionally interfere with medical treatment,”  
2 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir.2002) (internal citations and quotation marks  
3 omitted), or when they fail to respond to a prisoner’s pain or possible medical need. *Jett*,  
4 439 F.3d at 1096.

5 Even if deliberate indifference is shown, to support an Eighth Amendment claim the  
6 prisoner must show harm caused by the indifference. *Jett*, 439 F.3d at 1096 (the harm need  
7 not be substantial, although substantial harm would provide additional support for the  
8 showing of deliberate indifference).

## 9 **V. Discussion**

### 10 **A. Serious Medical Need**

11 Defendant argues that “[n]o reasonable jury could conclude that Plaintiff had a  
12 serious medical need because the interaction between a handheld metal detector and a  
13 pacemaker does not lead to harm.” (Doc. 18 at 6.)

14 Defendant misconstrues the objective portion of the legal standard. A serious  
15 medical need may be “[t]he existence of an injury that a reasonable doctor or patient would  
16 find important and worthy of comment or treatment; the presence of a medical condition  
17 that significantly affects an individual’s daily activities; or the existence of chronic and  
18 substantial pain.” *McGuckin*, 974 F.2d at 1059-60. In this case, medical personnel found  
19 Plaintiff’s heart condition to be worthy of comment or treatment because a pacemaker was  
20 implanted and it appears that he regularly has the pacemaker checked by medical  
21 professionals. The record also contains evidence of SNOs for a pacemaker and an expired  
22 SNO for light duty work.

23 Further, while Defendant contends that the interaction between a handheld metal  
24 detector and a pacemaker does not lead to harm, Defendant’s own evidence suggests  
25 otherwise. Although the advisory in Plaintiff’s medical record states that “interactions with  
26 metal detectors are unlikely to cause clinically significant symptoms in most patients,” it  
27 also advises a pacemaker patient not to stay near a metal detector longer than necessary, to  
28 inform security personnel that the patient has a pacemaker, and to ask security personnel

1 not to hold the metal detector near the pacemaker any longer “than is absolutely necessary”  
2 or to ask for an alternative form of personal search. (Doc. 19-1 at 10.) Thus, there appears  
3 to be some question among medical authorities whether metal detectors may cause harm  
4 to persons with pacemakers. Based on this record, there is a question of fact whether  
5 Plaintiff has a serious medical need.

#### 6 **B. Deliberate Indifference**

7 Defendant argues that he was not deliberately indifferent because when he was  
8 asked about the incident, he “stated that he was not aware that Plaintiff had a pacemaker  
9 until after he had scanned him with a handheld metal detector.” (Doc. 18 at 7.) Defendant’s  
10 evidence in support of this lack of knowledge is CO III Cuen’s response to Plaintiff’s  
11 informal complaint in which Defendant told Cuen that Plaintiff did not tell him Defendant  
12 had a pacemaker until after Defendant had used the wand on Plaintiff.

13 Plaintiff states in his January 24, 2018 HNR that he told Defendant he was sent to  
14 Defendant because he had a pacemaker, but Defendant “kept putting that wand on my  
15 pacemaker area[;] kept asking me what I had in me.” (Doc. 24 at 7.) Plaintiff recounted  
16 this same scenario in his Informal Complaint. (See Doc. 19-1 at 13.) Based on this  
17 evidence, which the Court must accept as true for purposes of this motion, there is a  
18 question of fact whether Defendant was aware of Plaintiff’s serious medical need.

19 The next issue is whether Defendant disregarded an excessive risk to Plaintiff’s  
20 health or safety. Based on this record, it appears that this was an isolated incident and was  
21 more akin to negligence, gross negligence, or incompetence, none of which rise to the level  
22 of an Eighth Amendment violation. See *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th  
23 Cir. 1980) (“[T]he indifference to [] medical needs must be substantial. Mere  
24 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of  
25 action.”); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (“In determining  
26 deliberate indifference, we scrutinize the particular facts and look for substantial  
27 indifference in the individual case, indicating more than mere negligence or isolated  
28 occurrences of neglect.”); *McGuckin*, 974 F.2d at 1060–61 (repeated failure to properly



1 treat a prisoner or a single failure that is egregious strongly suggests deliberate  
2 indifference).

3 Even assuming *arguendo* that Plaintiff could show that Defendant's conduct rose to  
4 the level of deliberate indifference, Defendant argues that Plaintiff cannot show he was  
5 harmed because Plaintiff's pacemaker was functioning normally when he saw the  
6 cardiologist on April 6, 2018 and again when it was checked again on August 5, 2019.  
7 (Doc. 18 at 7.) Plaintiff does not dispute that his pacemaker was not harmed by  
8 Defendant's use of the wand.

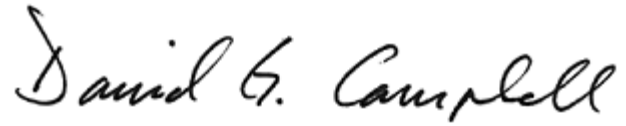
9 Defendant also cites to the cardiologist's statement that he told Plaintiff "getting a  
10 magnetic wand over pacemaker won't damage his heart." (Doc. 27 at 3.) The Court notes  
11 that the cardiologist also said "[i]t will make him feel unwell due to lack of synchrony,"  
12 but there is no evidence in the record explaining what that notation means, and the  
13 cardiologist did not indicate in his report that Plaintiff needed any immediate follow-up  
14 care related to this notation. (*See* Doc. 19-1 at 21.) The cardiologist also determined that  
15 Plaintiff's cardiovascular system had "Normal rate, regular rhythm, normal heart sounds  
16 and intact distal pulses." (*Id.* at 20.) Although Plaintiff said in his January 24, 2018 HNR  
17 and January 25, 2018 Informal Complaint that he had "weird chest pains" after Defendant  
18 used the wand on him (Doc. 24 at 7; Doc. 19-1 at 13), there is no evidence of any needed  
19 medical care as a result, and Plaintiff does not say he sought medical care after that. Based  
20 on this record, no reasonable jury would conclude that Plaintiff suffered harm as a result  
21 of Defendant's use of the magnetic wand over his pacemaker.

22 **IT IS ORDERED:**

23 (1) The reference to the Magistrate Judge is withdrawn as to Defendant  
24 Banning's Motion for Summary Judgment (Doc. 18).

1           (2) Defendant Banning's Motion for Summary Judgment (Doc. 18) is **granted**,  
2 and the action is terminated with prejudice. The Clerk of Court must enter judgment  
3 accordingly.

4           Dated this 13th day of February, 2020.

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8                               David G. Campbell  
9                               Senior United States District Judge  
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